

## **REMARKS**

The above amendments and these remarks are responsive to the Office action dated January 25, 2006 that was issued in connection with the above-identified patent application.

Prior to entry of this amendment, claims 1-18 were pending in the application. No claims are herein added. By the above amendments, applicants have cancelled claims 15 and 16 without prejudice. Claims 1-14, 17 and 18 thus remain pending in the application.

In the Office action, the Examiner rejected claims 1-3 under 35 U.S.C. 103(a) as being unpatentable over Envall (U.S. Patent No. 5,582,313) in view of Wooten, Jr. (U.S. Patent No. 3,008,177) and in view of Schuller (U.S. Patent No. 3,677,196). The Examiner also rejected claims 4-5 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. in view of Schuller as applied to claim 2, and further in view of Brunner (U.S. Patent No. 5,492,258). The Examiner also rejected claims 6-8, 10, and 12-14 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. and in view of Schuller. The Examiner also rejected claim 9 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. in view of Schuller and in view of Behringer (German Patent No. DE 19526477C1). The Examiner also rejected claim 11 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. in view of Schuller and in view of Gronwoldt et al. (U.S. Patent No. 5,823,411). The Examiner also rejected claims 15-16 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. in view of Schuller as applied to claim 6, and further in view of Brunner. The Examiner also rejected claim 17 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. The Examiner also rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Envall in view of Wooten, Jr. as applied to claim 17, and further in view of Miller et al. (U.S. Patent No. 4,249,684).

Applicants traverse the above-referenced rejections. In view of the amendments above and the remarks below, applicants respectfully request reconsideration of the application under 37 C.F.R. § 1.111 and allowance of the pending claims.

***Rejections under 35 USC § 103***

The Examiner rejected all pending claims under 35 U.S.C. 103(a) as being obvious to one of ordinary skill in the art. Various combinations of several references were used in rejecting the claims. Initially, applicants traverse all rejections under 35 U.S.C. § 103(a) for failure to properly articulate a motivation, suggestion or teaching to combine the various references cited in the Office action.

In applying 35 U.S.C. § 103, the references must suggest the desirability, and thus, the obviousness of making the combination. As stated by the Federal Circuit in In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992):

[T]he Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. 'The Examiner can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.' ... Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. ... This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the invention.'

Id. at 1265-1266 (citations omitted). Moreover, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Hodosh v. Block Drug Co., Inc., 786 F.2d 1136 (Fed. Cir. 1986).

Hindsight reconstruction is evidenced by defining the problem in terms of its solution. Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 139 F.3d 877, 882 (Fed. Cir. 1998). Each of the obviousness rejections set forth in the Office action is defined in terms of the details of the car top carrier defined in each claim. Applicants respectfully submit that this approach is exactly what the above-cited case law cautions against. As each of the rejections have been grounded in the solution recited in each claim and not some motivation, suggestion or teaching to combine found within the cited references, applicants respectfully submit that the rejections are not properly supported and should therefore be withdrawn.

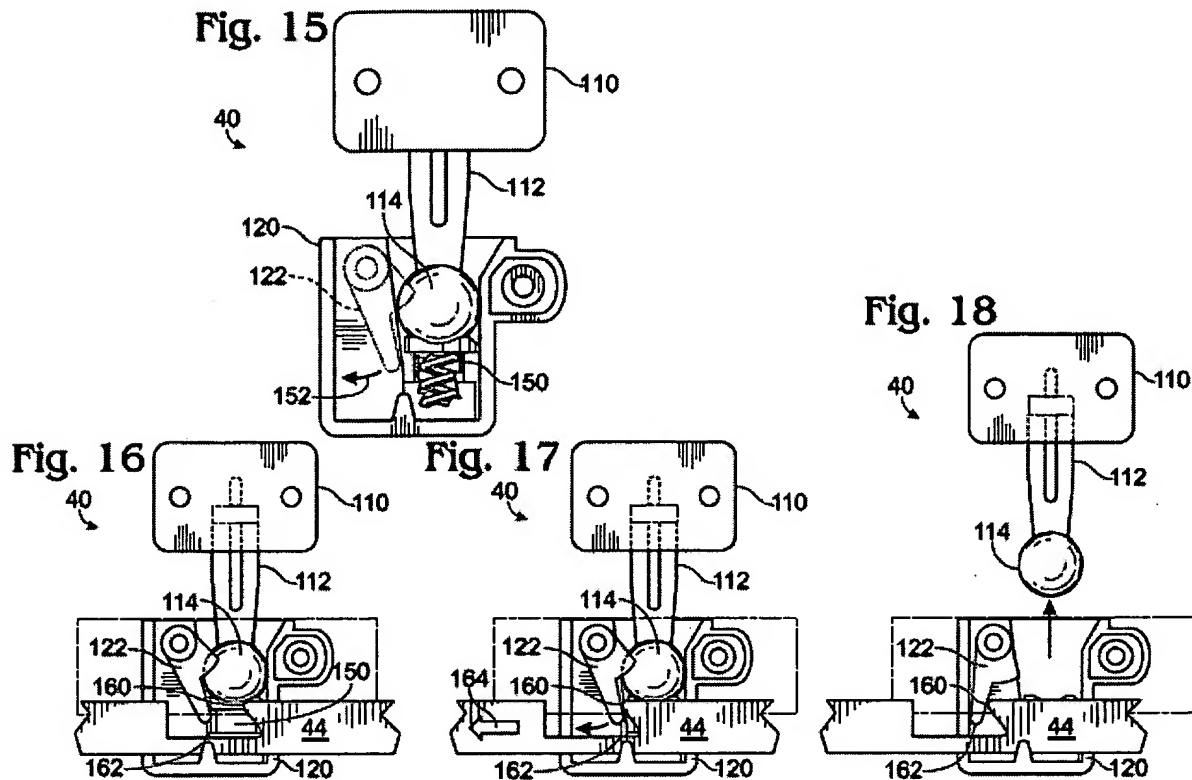
However, even if there were some motivation, suggestion or teaching to combine the cited references, applicants contend the Examiner's rejections are improper and should be withdrawn. The Examiner rejected claim 1 under 35 U.S.C. 103(a) as being unpatentable over Envall (U.S. Patent No. 5,582,313) in view of Wooten, Jr. (U.S. Patent No. 3,008,177) and in view of Schuller (U.S. Patent No. 3,677,196). Claim 6, the only remaining independent claim after the above amendments, was similarly rejected using the Envall, Wooten, Jr. and Schuller references. First, applicants do not believe that the cited references teach the invention as claimed. Furthermore, applicants do not believe that the Schuller reference, which relates to a covered "hopper car"—a type of railroad freight car—is analogous prior art. For each of these reasons, applicants contend that the Examiner's rejections under 35 U.S.C. are improper and respectfully request that they be withdrawn.

*Failure to Teach the Claimed Subject Matter*

As the Examiner notes, Envall teaches a box having a lid and a bottom, a clamp device configured to attach the bottom of the box to a pair of crossbars on top of a car, and rotatable hinges releaseably connecting the lid to the bottom, each hinge including a first portion secured to the lid and a second portion secured to the bottom. As the Examiner further notes, Wooten, Jr. teaches a release mechanism allowing a hinge mechanism to function as a latch by allowing separation of first and second portions of the hinge. However, contrary to the Examiner's assertion, applicants do not believe that Schuller teaches a hinge device automatically snapping into engagement when the first portion is urged toward the second portion, as required by applicant's claims.

Applicants' claimed hinge devices are embodied in applicants; Figures 15–18, shown below. As these Figures indicate, downward motion of a first portion 114 of the hinge device pushes a second portion 122 of the hinge device out of the way of the first portion until, when the first portion has been sufficiently pushed down, the second portion snaps back over the top of the first portion and engages it. In this manner, applicants' hinge device automatically snaps into engagement when the first portion is urged toward the second portion. As the word "automatically" in applicants' claim 1 suggests, aside from urging the first portion of the hinge device toward the second portion, no additional

manipulation of the hinge device is required to snap the device into engagement. Rather, the first and second portions of applicants' hinge device act in a coordinated manner to snap into engagement when urged together.



Figures 4–5 of Schuller are shown below. As these Figures indicate, Schuller discloses a hinged latch mechanism having a first (upper) portion and a second (lower) portion. However, for reasons described in detail following the Figures, applicants do not believe that the hinge device of Schuller “automatically snaps into engagement when the first portion is urged toward the second portion,” as is recited in claim 1.

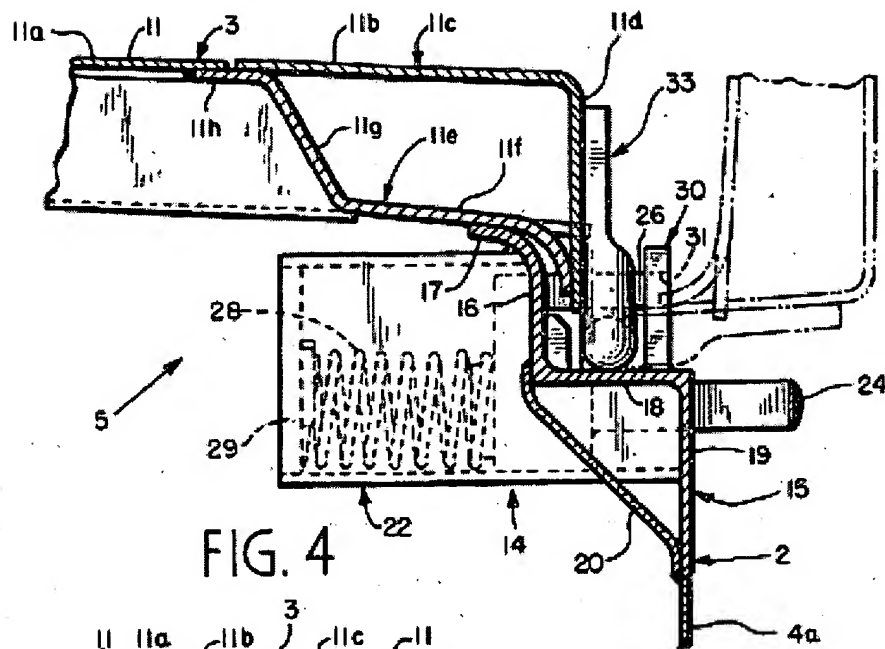


FIG. 4

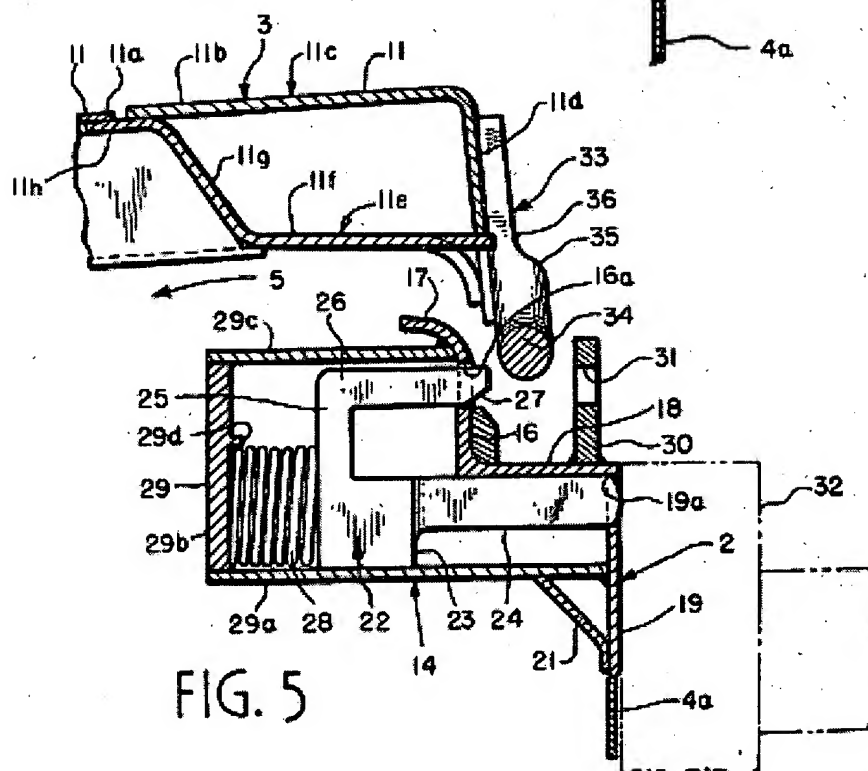


FIG. 5

When Schuller's hinge mechanism is in the unlocked position, horizontal arm 26 of the lower portion of the mechanism is positioned as indicated in Figure 4 above, in essence blocking bar 34 from entering the locked position. To engage the upper and lower portions of the hinge mechanism, horizontal arm 26 first must be moved out of the way, as shown in Fig. 5, by compressing spring 28. This cannot be accomplished merely by

urging the upper portion of the hinge mechanism toward the lower portion, as recited in claim 1, because such a motion would simply force horizontal bar 34 against horizontal arm 26 without displacing the horizontal arm, so that the two portions would not engage. According to Schuller, horizontal arm 26 is moved when “[t]he upper end of the plunger 24 is acted on by the fixture or rotary dumper positioner arm 32 on the car dumper” (col. 2, lines 21–23). In any case, it is clear from Schuller’s disclosure that some force other than the downward motion of arm 26 is necessary to compress spring 28 and move the lower portion of the mechanism out of the way.

On the other hand, if horizontal arm 26 is already positioned in its unlatched position, as shown in Figure 5 of Schuller, then horizontal bar 34 is free to move down until it lies in a plane below the plane of horizontal arm 26, i.e. horizontal bar 34 is free to move into its engaged position. However, this does not constitute engagement of the two hinge portions, since arm 26 remains in its unlatched position, so that bar 34 is still free to move back up and out of its engaged position. To engage the two portions after bar 34 is in place, positioner 32 (or the analogous external force responsible for compressing spring 28) must be removed, allowing arm 26 to move into its latched position. In other words, Schuller discloses a hinge device having upper and lower portions that move into engagement through independent motions. Schuller’s hinge device does not automatically snap into engagement when the first portion is urged toward the second portion, as recited in claim 1. Therefore claim 1 and all depending claims are patentable over the art of record.

#### Non-analogous Art

In addition, applicants contend that the Schuller reference is non-analogous art and therefore cannot properly be used to reject the pending claims as being obvious. Under current precedent, “In order to rely on a reference as a basis for rejection ..., the reference must either be in the field of applicants’ endeavor, or if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992). “A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention

in considering his problem.” In re Clay, 966 F.2d 656, 659 (Fed. Cir. 1992). First, the Schuller reference is not in the field of applicants’ endeavor. Applicants are in the field of designing racks for automobiles. In contrast, Schuller is in the field of designing hopper cars, particularly releasable roof structures for hopper cars.

Second, the Schuller reference is not pertinent to problems addressed by applicants’ invention. Applicants provide a solution to the problem of enabling a user to engage a latch/hinge device merely by the simple motion of closing a lid, or urging the top part of the latch/hinge toward the bottom part. In contrast, Schuller is seeking an engagement mechanism mediated by intervening movement of a “rotary dumper positioner arm” independent of a downward movement of the upper latch portion. Thus, the claimed invention and Schuller were working in different fields of endeavor and were addressing nonanalogous, dissimilar problems. Therefore, the reliance on Schuller should be withdrawn because it is nonanalogous art.

Independent claim 6 has been amended to include limitations previously recited in claims 15 and 16. The Examiner rejected claims 15 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Envall in view of Wooten, in view of Schuller, and further in view of Brunner. Applicants traverse this rejection.

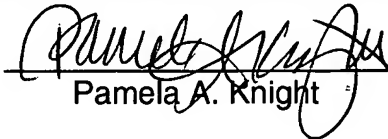
Claim 6 as amended recites that the catch includes a pawl that is spring-biased toward a restricted-passage position, and wherein the pawl can be pushed aside by the enlarged structure upon entry, but not upon exit of the catch. The Examiner states that the catch includes the pawl (21) that is spring-biased toward the restricted-passage position. However, upon close examination of the device disclosed in Brunner, clamping jaw 12, or attack surface 21, do not appear to be spring-biased, as recited in claim 6. Further, there is no mechanism for clamping jaw 12 to be “pushed aside” by railing tube 3 “upon entry, but not upon exit”. Therefore, neither Brunner, nor any of the other references of record, individually or in any combination, teach or suggest the invention recited in amended claim 6. All of the remaining claims now depend from claim 6. Therefore, all of the claims are in allowable form.

Applicants believe the application is now in condition for allowance, in view of the above amendments and remarks. If the Examiner has any questions, or if a

telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

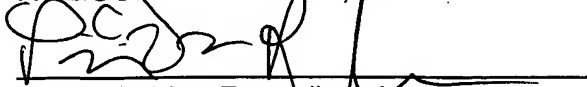
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Respectfully submitted,

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